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January 14, 2003
by e-mail: regulations@ssa.gov

Commissioner of Social Security
P.O. Box 17703
Baltimore, MD 21235-7703

Re: Comments on proposed rules on collection of overdue program and administrative debts using administrative wage assignment, 67 Fed. Reg. 69164 (11/15/02).

Dear Commissioner:

We write to comment upon the above-referenced proposed rule. The Disability Law Center, where we have worked for more than twelve years each, is a private, nonprofit protection and advocacy agency that provides free legal assistance to persons with disabilities throughout Massachusetts. Since 1983, the Disability Benefits Project at the Disability Law Center has provided technical back up and support to legal services advocates and private attorneys engaged in Social Security and SSI law practice. The project also engages in community outreach and training. The following comments are based on our experience and submitted on behalf of those our agency serves.

We believe that the use of wage assignment to collect overpayments of SSI and SSDI benefits will constitute a new work disincentive at a time when SSA is trying to actively promote work through the Ticket to Work Program. Overpayments are chronic and seem to be unavoidable for SSI and SSDI benefit recipients who work. In our experience, a large number of incorrect benefit payments and the resulting overpayments are due to problems within the agency itself. These problems include inadequate staffing in local offices to permit the necessary time with claimants to fully explain the complex work incentive rules and claimant reporting responsibilities. Inadequate staffing also results in the failure to act upon claimant reports in a timely manner, eventually resulting in large benefit overpayments. In addition, many SSA staff appear to lack adequate training and resource supports, resulting in adequate or even incorrect information given to claimants. Further, the agency appears to have no consistent policy or

method of documenting claimant reports of work or other changes potentially affecting eligibility or benefit amount. Nor does the agency provide claimants written confirmation that a report was made or receipts for documents submitted. The result can be benefit overpayments and claimant inability to prove that the required reports were indeed made.

All of these problems result in claimants being assessed large benefit overpayments through no fault of their own. The fact of these unavoidable overpayments is a work disincentive in and of itself. The addition of the potential for wage assignment to collect the unavoidable overpayments will only add to the work disincentive. Wage assignment has a very negative connotation with employers and in the general population, as it is understood to mean that the employee has done something wrong and also results in more work for the employer. No one understands that people who have done nothing wrong can be assessed a large overpayment of benefits and end up with wage assignment - it just does not make ordinary sense. But it will happen. In addition to the problems described above, we have heard from claimants who have been discouraged from filing appeals or Requests for Waiver of Overpayment. We have heard from claimants who felt they had to agree to agreements to repay that included monthly payments that were more than they could afford. We have also heard from claimants who had entered into agreements to repay that were abrogated by another part of SSA because the agreed upon amount was considered insufficient to result in repayment fast enough, even though the claimant's ability to repay had not really changed.

In short, the risk that claimants will be unnecessarily subjected to and hurt by wage assignment is real. Almost everyone has difficulty understanding the complex benefit eligibility and work rules and why they receive what they receive (many do not even know difference between SSI and SSDI). In addition, claimants with mental impairments, cognitive impairments, low educational levels and language limitations, who make up a large proportion of disability benefit recipients, are particularly at risk. Accordingly, for all the above reasons, it is critical that the wage assignment regulations include all potential procedural protections for claimants.

On the plus side, we commend SSA for proposing to provide 60 days advance notice before wage garnishment can be implemented, see proposed rule 20 C.F.R. § 422.410(a)(1), when the Department of Treasury regulations require "at least 30 days." See 31 C.F.R. § 285.11(e)(1). Thirty days is simply too short for many claimants, due to limitations imposed by their disabilities or due to delays getting through to someone at SSA.

On the negative side, we do not think that the proposed regulations require enough information in the 60 day advance notice. 20 C.F.R. § 422.415 requires that the notice inform the claimant that he or she may request review of the payment schedule stated in the notice. Given the great need for claimant protections, described above, we urge you to require a full explanation of this right, including the financial hardship provisions and the fact that the request to reduce the amount of wage assignment may be made at any time.

In addition, the proposed regulations do not include any opportunity for an oral hearing, as required in the regulations of the Department of Treasury:

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the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example when the validity of the claim turns on the issue of credibility or veracity.

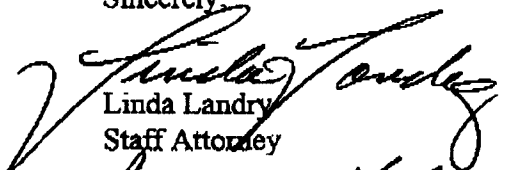
31 C.F.R. § 285.11(f)(3).

We believe that proposed regulation 20 C.F.R. § 422.425(b) does not comply with the Department of Treasury requirement and overlooks the need for an interactive discussion between SSA and the claimant in cases where a paper review is inadequate. Given the need described above for procedural protections for claimants, we urge you to include an oral hearing process, which need not be formal, as required by the Department of Treasury regulations.

Finally, the proposed regulations do not provide a time limit for SSA to issue a decision when a claimant requests review of proposed wage assignment. The Department of Treasury regulation requires that a hearing decision be issued "as soon as practicable, but not later than sixty (60) days" after the hearing request is received. 31 C.F.R. § 285.11(f)(10).

Thank you for your consideration of these comments.

Sincerely,



Linda Landry
Staff Attorney



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Senior Staff Attorney